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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,155	07/23/2003	Pradip Mitra	10919/21401	7997
38441	7590	02/28/2006	EXAMINER	
LAW OFFICES OF JAMES E. WALTON, PLLC 1169 N. BURLESON BLVD. SUITE 107-328 BURLESON, TX 76028			NGUYEN, HUONG Q	
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 02/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/625,155	Applicant(s) MITRA, PRADIP	
	Examiner Helen Nguyen	Art Unit 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-58 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species:

Species 1, drawn to a method and apparatus of detecting diseased tissue by a comparison of the spatial distribution of a first and second plurality of average temperature values to a first and second average temperature, as disclosed in ¶0007 of the specification, also referred to as embodiment 1 in Figure 2. Species 1 is drawn to **Claims 1-4, 30-33**.

Species 2, drawn to a method and apparatus of detecting diseased tissue by a comparison of the spatial distribution of the slopes of a correlated first and second plurality of average temperature values to a slope of the correlation of known healthy skin, as disclosed in ¶0009 of the specification, also referred to as embodiment 4. Species 2 is drawn to **Claims 5-12, 34-40**.

Species 3, drawn to a method and apparatus of detecting diseased tissue by a comparison of the intercept of a correlated first and second plurality of average temperature values to an intercept of the correlation of known healthy skin, as disclosed as embodiment 5 in paragraph ¶0029 of the specification. Species 3 is drawn to **Claims 12-15, 41-44**.

Species 4, drawn to a method and apparatus of detecting diseased tissue by a comparison of the spatial distribution of a first and second plurality of homogeneity of skin temperature values (HST) to a first and second average homogeneity of skin temperature values, as disclosed in paragraph ¶0008 of the specification. Species 4 is drawn to **Claims 16-22, 45-51**.

Species 5, drawn to a method and apparatus of detecting diseased tissue by a comparison of the spatial distribution of a first and second plurality of temperature standard deviations to a first and second average temperature standard deviation, as disclosed in paragraph ¶0010 of the specification, also referred to as embodiment 8 in Figure 6. Species 5 is drawn to **Claims 23-29, 52-58**.

2. The species are independent or distinct because each discloses a different mode of determining diseased tissue as evidenced by the different comparisons used and thus, would require a different search.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

3. Applicant is also required to elect between one or more sets of subspecies, depending upon the first species chosen from the above list. These subspecies are listed as follows:

Species A is directed towards a method and apparatus for detecting diseased tissue by a comparison of the contributing frequency with a lower and upper threshold frequency, as disclosed in ¶0024 of the specification, also referred to as embodiment 2.

Species B is directed towards a method and apparatus for detecting diseased tissue by a comparison of the amplitude of the contributing frequency, as disclosed in ¶0025, also referred to as embodiment 3.

Species C is directed towards a method and apparatus for detecting diseased tissue by a correlation made at neuronal frequencies, as disclosed in ¶0028.

Species D is directed towards a method and apparatus for detecting diseased tissue by a correlation made at nitric oxide-controlled (NO) frequencies, as disclosed in ¶0028.

Species E is directed towards a method and apparatus for detecting diseased tissue wherein thermal stress is induced by a flow of air over the tissue, as disclosed in ¶0034.

Species F is directed towards a method and apparatus for detecting diseased tissue wherein thermal stress is induced by a water mist over the tissue, as disclosed in ¶0034.

4. If applicant chooses **Species 1**, applicant is required to elect between *Species A* and *Species B*, wherein *Species A* is drawn to **Claims 2, 31** and *Species B* is drawn to **Claims 3, 32**.
5. If applicant chooses **Species 2**, applicant is required to elect between one of *Species C* and *D*, and between one of *Species E* and *F*, wherein *Species C* is drawn to **Claims 7, 36**, *Species D* to **Claims 8, 37**, *Species E* to **Claims 10, 39**, and *Species F* to **Claims 11, 40**.
6. If applicant chooses **Species 3**, applicant is required to elect between *Species C* and *D*, wherein *Species C* is drawn to **Claims 14, 43** and *Species D* is drawn to **Claims 15, 44**.
7. If applicant chooses **Species 4**, applicant is required to elect between one of *Species A* and *B*, and between one of *Species E* and *F*, wherein *Species A* is drawn to **Claims 17, 46**, *Species B* to **Claims 18, 47**, *Species E* to **Claims 21, 50**, and *Species F* to **Claims 22, 51**.
8. If applicant chooses **Species 5**, applicant is required to elect between one of *Species A* and *B*, and between one of *Species E* and *F*, wherein *Species A* is drawn to **Claims 24, 53**,

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Species B is drawn to **Claims 25, 54**, Species E is drawn to **Claims 28, 57**, and Species F is drawn to **Claims 29, 58**.

9. A telephone call was made to Daren Davis on February 22, 2006 at 12:30 pm to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen Nguyen whose telephone number is 571-272-8340. The examiner can normally be reached on Monday - Friday, 8 am - 5 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HQN
2/22/06



MAX HINDENBURG
PATENT EXAMINER
EBC CENTER 3700